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DOUGLAS C.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DOUGLAS C.

Plaintiff,

v.

UNITED HEALTHCARE SERVICES,
INC.; UNITED BEHAVIORAL
HEALTH; PETER KIEWIT SONS', INC.
WELFARE BENEFIT PLAN; and DOES
1 through 10,

Defendants.

Case No.

**PLAINTIFF DOUGLAS C.'s
COMPLAINT FOR BREACH OF THE
EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974 (ERISA);
BREACH OF FIDUCIARY DUTY;
ENFORCEMENT AND CLARIFICATION
OF RIGHTS; PREJUDGMENT AND
POSTJUDGMENT INTEREST; AND
ATTORNEYS' FEES AND COSTS**

Plaintiff, DOUGLAS C. herein sets forth the allegations of this Complaint against
Defendants UNITED HEALTHCARE SERVICES, INC.; UNITED BEHAVIORAL HEALTH;
PETER KIEWIT SONS', INC. WELFARE BENEFIT PLAN; and DOES 1 through 10.

PRELIMINARY ALLEGATIONS

JURISDICTION

1. Plaintiff brings this action for relief pursuant to Section 502(a)(1)(B) and (a)(3)
of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Section 1132(a)(1)(B),
and (a)(3). This Court has subject matter jurisdiction over Plaintiff's claim pursuant to ERISA
Section 502 (e), (f) and (g), 29 U.S.C. Section 1132 (e), (f), and (g) and 28 U.S.C. Section 1331

1 as it involves a claim made by Plaintiff for employee benefits under an employee benefit plan
 2 regulated and governed under ERISA. Jurisdiction is predicated under these code sections as
 3 well as 28 U.S.C. Section 1331 as this action involves a federal question.

4 2. This action is brought for the purpose of recovering benefits under the terms of
 5 an employee benefit plan, and enforcing Plaintiff's rights under the terms of an employee
 6 benefit plan named as a Defendant.

7 3. Plaintiff seeks relief, including but not limited to: past mental health benefits in
 8 the correct amount related to Defendants' improper denial of Plaintiff's claim; prejudgment and
 9 post judgment interest; general and special damages; and attorneys' fees and costs; and any
 10 other form of equitable relief that may arise during the pendency of this action and that the
 11 Court may deem appropriate.

12 PARTIES

13 4. Plaintiff is and at all times relevant was a resident of the State of California.

14 5. At all relevant times, DOUGLAS C. participated in an employee welfare benefit
 15 plan, PETER KIEWIT SONS', INC. WELFARE BENEFIT PLAN, ("the Plan") within the
 16 meaning of ERISA section 3(1), 29 U.S.C. § 1002(1), sponsored by Plaintiff's employer.

17 6. Mental Health benefits under the Plan were at all relevant times administered by
 18 Defendants UNITED HEALTHCARE SERVICES, INC. and/or its subsidiary UNITED BEHAVIORAL
 19 HEALTH (both entities hereinafter referred to where appropriate as "United").

20 7. United is a health insurance provider authorized to transact and currently transacting the
 21 business of insurance in the State of California.

22 8. C.C. is DOUGLAS C.'s son and a Plan beneficiary.

23 9. M.C. is DOUGLAS C.'s son and a Plan beneficiary.

24 10. At all relevant times, the Plan was an insurance plan that offered, *inter alia*,
 25 mental health benefits to employees and their beneficiaries, including Plaintiff, C.C., and M.C.
 26 This action involves mental health claims denied by United Behavioral Health and guaranteed
 27 under the Plan.
 28

FACTS

11. The Plan guarantees, warrants, and promises coverage for medically necessary health care services, care and treatment, including but not limited to: health care services, mental health care, and the treatment at issue herein.

12. At all relevant times C.C. and M.C. were beneficiaries of the Plan, and the Plan was in full force and effect.

13. The Summary Plan Description defines Medically Necessary services as services that are

- In accordance with Generally Accepted Standards of Medical Practice.
- Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for your Sickness, Injury, Mental Illness, substance-related and addictive disorder, disease or its symptoms.
- Not mainly for your convenience or that of your doctor or other health care provider.
- Not more costly than an alternative drug, service(s) or supply that is at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of your Sickness, Injury, disease or symptoms.

14. The Plan contemplates treatment for participants and beneficiaries in a residential treatment center.

15. The Plan covers mental health expenses and services including stays in residential treatment facility.

16. California's Mental Health Parity Act, Health & Safety Code §1374.72, as well as the Federal Mental Health Parity and Addictions Equity Act of 2008 ("MHPAEA") specifically require that health care plans provide medically necessary diagnosis, care and treatment for the treatment of specified mental health illnesses at a level equal to the provision of benefits for physical illnesses.

17. At all times relevant, M.C. was diagnosed with, *inter alia*, adjustment disorder and cannabis use disorder. At all times relevant, C.C. was diagnosed with major depressive disorder and adjustment disorder.

1 18. When C.C. was 10 and when M.C. was 12, their mother was diagnosed with
2 cancer.

3 19. When C.C. was 12 and when M.C. was 14, their mother passed away.

4 20. Around 2016, Both C.C. and M.C. began having severe behavioral problems. They
5 would physically fight one another and other family members.

6 21. C.C. ran away from home on multiple occasions. His behavior was unmanageable
7 at home.

8 22. As a result of his worsening conditions, C.C. was admitted to Center for
9 Discovery, a residential treatment center. Upon his discharge, C.C.'s behavior was worse than
10 ever and he was soon thereafter admitted to Liahona Preparatory Academy.

11 23. Despite ongoing treatment, C.C.'s condition continued to deteriorate.

12 24. M.C.'s condition had also been deteriorating. He self-harmed, breaking both of his
13 wrists shortly after his mother passed away.

14 25. M.C. became increasingly violent and destructive. He destroyed items in the home.

15 26. As a result of his worsening conditions, M.C. was admitted to Liahona Preparatory
16 Academy. Upon discharge, his behavior continued to worsen. He physically fought constantly
17 with his brother C.C. and at one point attacked him with a knife.

18 27. As a result of their worsening conditions and the failure of prior treatment
19 attempts, both C.C. and M.C. were admitted to Diamond Ranch Academy ("Diamond Ranch"),
20 a residential treatment center.

21 28. At all times relevant, both C.C.'s and M.C.'s treatment at Diamond Ranch was
22 medically necessary, based upon the reasoned medical opinions of their mental health
23 providers.

24 29. Plaintiff filed claims for mental health benefits with Defendants for C.C.'s and
25 M.C.'s treatment at Diamond Ranch.
26
27
28

1 30. Defendants denied Plaintiff's claims for C.C.'s and M.C.'s treatment at Diamond
2 Ranch.

3 31. Plaintiff timely appealed Defendants' claim denials.

4 32. Defendants denied Plaintiff's appeals.

5 33. Plaintiff timely filed second level appeals for C.C.'s and M.C.'s treatment at
6 Diamond Ranch.

7 34. Defendants denied Plaintiff's second level appeals.

8 35. In denying Plaintiff's claim for care and treatment for C.C. and M.C., United
9 used "level of care guidelines" that are unfair and biased against approving medically
10 necessary, sub-acute claims for residential treatment such as are at issue herein, and that do not
11 reflect reasonable standards in the medical community.
12

13 36. The level of care guidelines used by United to deny C.C. and M.C.'s care fall
14 below reasonable standards of care in the medical community.
15

16 37. United breached the generally accepted standard of care herein, by failing to
17 accept and consider that treatment is not limited to simply alleviating an individual's current
18 mental health symptoms, and by ignoring and failing to consider the long-term, chronic nature
19 of C.C.'s and M.C.'s mental health needs.

20 38. United breached the generally accepted standard of care herein, by failing to
21 accept and consider that effective treatment of co-morbid, or co-occurring behavioral health
22 disorders requires consideration of the interaction of these disorders, and the implications of
23 these disorders on determining the proper and appropriate level of care.
24

25 39. United breached the generally accepted standard of care herein, by failing to
26 accept and consider that where there is ambiguity over the proper level of care, that
27 practitioners should err on the side of caution and should place patients in the higher level of
28 care.

40. United breached the generally accepted standard of care herein, by improperly focusing on acute symptomology and failing to consider that the same level of care is needed when an acute crisis has passed, and by failing to consider the likelihood of regression and risk of further acute symptomology.

41. All of the above failures, *inter alia*, constitute an abuse of discretion by United in the handling of C.C.'s and M.C.'s claims for mental health care and treatment.

42. As a result, Plaintiff was forced to pay for C.C.'s and M.C.'s care and treatment at Diamond Ranch from his own personal funds.

43. Plaintiff has exhausted all administrative remedies regarding the denial of C.C.'s and M.C.'s mental health benefits.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Recovery of Benefits Due Under an ERISA Benefit Plan (Against UNITED HEALTHCARE SERVICES, INC.; UNITED BEHAVIORAL HEALTH; PETER KIEWIT SONS', INC. WELFARE BENEFIT PLAN; and DOES 1-10 For Plan Benefits, Enforcement and Clarification of Rights, Prejudgment and Post Judgment Interest, and Attorneys' Fees and Costs, Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B))

44. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

45. ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B) permits a plan participant to bring a civil action to recover benefits due under the terms of the plan and to enforce Plaintiff's rights under the terms of a plan.

46. At all relevant times, Plaintiff, and his sons C.C. and M.C. were insured under the health care plan at issue herein. At all relevant times, C.C. and M.C. met the medical necessity criteria for treatment required under the terms and conditions of the Plan.

47. By denying Plaintiff's mental health claim, Defendants have violated, and continue to violate, the terms of the Plan, the terms of ERISA, and Plaintiff's rights thereunder.

1 48. The provisions of an ERISA plan should be construed so as to render none
2 nugatory and to avoid illusory promises.

3 4 **SECOND CAUSE OF ACTION**

5 **Breach of Fiduciary Duty Under ERISA § 502(a)(3), 29 U.S.C. Section 1132(a)(3)** 6 **(against Defendants UNITED HEALTHCARE SERVICES, INC.; UNITED BEHAVIORAL** 7 **HEALTH; PETER KIEWIT SONS', INC. WELFARE BENEFIT PLAN; DOES 1-10)**

8 49. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth
9 herein.

10 50. At all material times herein, Defendants, and each of them, were fiduciaries with respect
11 to their exercise of authority over the management of the Policy, disposition of Plan assets, and
12 administration of the Policy.

13 51. Plaintiff asserts that a claim for benefits due under the Policy does not provide
14 him with an adequate remedy at law in light of Defendants' continuing course of conduct in
15 violating the terms of the Policy and applicable law as described below.

16 52. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires fiduciaries to
17 discharge their duties solely in the interests of employee benefit plan participants and
18 beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable
19 expenses of administering the plan.

20 53. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries to
21 discharge their duties with the care, skill, prudence, and diligence under the circumstances then
22 prevailing that a prudent man acting in like capacity and familiar with such matters would use in
23 the conduct of an enterprise of a like character and with like aims.

24 54. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires fiduciaries to
25 discharge their duties in accordance with the documents and instruments governing the plan
26 insofar as such documents and instruments are consistent with the provisions of ERISA.

27 55. In committing the acts and omissions herein alleged, Defendants breached their
28 fiduciary duties in violation of ERISA §§ 404(a)(1)(A), (B) and (D), 29 U.S.C. §§
1104(a)(1)(A)(B) and (D).

56. At all material times herein, Defendants, and each of them, violated these duties by, *inter alia*, the following:

A. Consciously, unreasonably, intentionally, and without justification, failing to disclose to plan participants their use of Optum “level of care guidelines” that are unfair and biased against approving claims for residential treatment such as are at issue herein, and that do not reflect reasonable standards in the medical community;

B. Consciously, unreasonably, intentionally, and without justification, violating California’s Mental Health Parity Act, Health & Safety Code §1374.72, as well as the Federal Mental Health Parity and Addictions Equity Act of 2008 (“MHPAEA”) which specifically require that health care plans provide medically necessary diagnosis, care and treatment for the treatment of specified mental health illnesses at a level equal to the provision of benefits for physical illnesses;

C. Consciously and unreasonably failing to investigate all bases upon which to pay and honor Plaintiff’s claim, and related claims and/or similar claims, for benefits, and consciously and unreasonably failing to investigate all bases to support coverage fairly and in good faith and refusing to give Plaintiff’s interests or the interests of the Plan at least as much consideration as they gave their own;

D. Consciously and unreasonably asserting improper bases for denying full payment of Plaintiff’s claim, and related claims and/or similar claims, for mental health care benefits;

E. Consciously and unreasonably interpreting the Plan in a manner designed to deny and minimize benefits and in a manner that thwarts the reasonable expectations of the Plan’s beneficiaries and participants in order to maximize its own profits and minimize the benefits that it pays claimants;

F. Consciously and unreasonably refusing to pay Plaintiff’s claim, and related claims and/or similar claims, with the knowledge that Plaintiff’s claim and similar claims are payable and with the intent of boosting profits at Plaintiff’s and other claimants’ expense; and

1 G. Consciously and unreasonably failing to follow the terms of the Plan and
 2 applicable regulations governing the administration of claims, and the review of denied
 3 claims.

4 57. As a result of Defendants' breaches of fiduciary duty, Plaintiff has been harmed,
 5 and the Defendants have been permitted to retain assets and generate earnings on those assets to
 6 which Defendants were not entitled.

7 58. Plaintiff further requests judgment permanently enjoining Defendants United
 8 HealthCare Services, Inc. and United Behavioral Health from ever again serving as a fiduciary
 9 with respect to the Plan, together with attorneys' fees and cost; and enjoining the Plan from
 10 using level of care guidelines that fall below reasonable standards in the medical community,
 11 either as written or as applied, or both. In addition, Plaintiff seeks appropriate equitable relief
 12 from all Defendants, and each of them, including an order by this Court that, based upon
 13 principles of waiver and/or estoppel, Plaintiff is entitled to benefits in the amount of the cost of
 14 C.C.'s and M.C.'s treatment at Diamond Ranch. In addition, Plaintiff seeks disgorgement of
 15 profits, make-whole relief, and that Plaintiff be placed in the position that he would have been in
 16 had he been paid the full amount of benefits to which he is entitled, including, without limitation,
 17 interest, attorneys' fees and other losses resulting from Defendants' breach.

18 **PRAYER FOR RELIEF**

19 **AS TO ALL DEFENDANTS**

20 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

21 1. Declare that Defendants, and/or each of them, violated the terms of the Plan by failing to
 22 provide mental health benefits;

23 2. Order Defendants, and/or each of them, to pay the mental health benefits due, together
 24 with prejudgment interest on each and every such benefit payment through the date of judgment at the
 25 rate of 9% compounded;

26 3. For appropriate equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. §
 27 1132(a)(3), including but not limited to a declaration of Plaintiff's rights hereunder with respect
 28

1 to Defendants UNITED HEALTHCARE SERVICES, INC.; UNITED BEHAVIORAL
 2 HEALTH; PETER KIEWIT SONS', INC. WELFARE BENEFIT PLAN; an injunction against
 3 further failure to provide like benefits; injunctive relief requiring Defendants to adjudicate claims
 4 for mental and behavioral health benefits utilizing generally accepted standards of care; removal
 5 of Aetna as a Plan fiduciary; disgorgement of any profits or ill gotten gain realized by any
 6 Defendants; and surcharge for any pecuniary injuries Plaintiff has suffered as a consequence of
 7 Defendants' breaches of their ERISA fiduciary duties;

8
 9 4. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to
 10 ERISA Section 502(g), 29 U.S.C. Section 1132(g);

11 5. Provide such other relief as the Court deems equitable and just, including but not limited
 12 to all remedies set forth in ¶52, below.

13 **AS TO ALL CAUSES OF ACTION:** For such other and further relief as the Court deems just and
 14 proper.
 15

16 Dated: April 14, 2022

Respectfully submitted,

DL LAW GROUP

19 By: /s/ David M. Lilienstein

David M. Lilienstein

Katie J. Spielman

Attorneys for Plaintiff, DOUGLAS C.